

POURING RIGHTS AGREEMENT

This Pouring Rights Agreement ("**Agreement**") is by and between Bottling Group, LLC and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 100 John Rd Canton, MA 02021 ("**Pepsi**") and University of Massachusetts Lowell, with its principal place of business at One University Ave Lowell, MA 01854 (the "**Customer**" or "**University**").

WHEREAS, Pepsi desires the right to be the exclusive supplier of Beverages (as defined below) to the Customer; and

WHEREAS, Pepsi has submitted a bid in response to Request for Proposal CL12-TH-0017 issued by the Customer for the exclusive right to develop and carry out a program for the sale of its beverage products in all facilities owned and operated by the Customer as of January 1, 2012; and

WHEREAS, Pepsi is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the Customer has determined that it is in the best interests of the Customer to contract with Pepsi to provide services for the sale of beverage products; and

WHEREAS, Pepsi wishes to identify itself with the Customer and to have its products promoted and sold at the Facilities (as defined below) and further wishes to receive the other promotional benefits provided for by the Customer in this Agreement; and

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. DEFINITIONS.

"**Approved Cups**" means the disposable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products. In addition, Pepsi agrees that the Customer shall have the right to produce limited-run commemorative cups for use at the Facilities bearing the name or trademarks of sponsors selected by Customer and that such cups shall also be considered to be Approved Cups, provided that Pepsi shall have the right to request that Pepsi's trademark(s) for Pepsi® also be included on such commemorative cups. Customer agrees to include Pepsi's trademark(s) on any limited-run commemorative cups, provided that the inclusion of Pepsi's trademark(s) is not prohibited by the terms of any agreement with other sponsor(s) selected by Customer to appear on such cups. The use and size of Pepsi's trademark(s) on such commemorative cups shall be subject to the prior approval of Pepsi, such approval not to be unreasonably conditioned, withheld or delayed. In no event will any limited-run commemorative cups produced by Customer contain the name or marks of any Competitive Products.



"Beverage" or **"Beverages"** means all carbonated and non-carbonated, non-alcoholic drinks, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks and (vii) bottled or canned water whether carbonated or still (spring, mineral or purified). The definition of "Beverage" or "Beverages" shall not include the following: a) fresh brewed (hot or iced) coffee and tea; b) bottled water dispensed through water coolers in University offices; c) milk; d) any tap or filtered water dispensed through publically accessible faucets or fountains in the Facilities; and e) non-alcoholic beer.

"Cases" shall mean the number of cases of Packaged Products purchased by the Customer from Pepsi, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Pepsi, from time to time.

"Competitive Products" shall mean any and all Beverages other than the Products.

"Customer Marks" shall mean (i) the Designations (as defined below) and (ii) the Customer's characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the Customer and which relate to the Facilities and which are in existence on at the beginning of the Term or which will be created during the Term.

"Designations" shall include, but not be limited to, the following: "A Proud Sponsor of the [Customer]," "Water and Soft Drink of the [Customer]" and "Sponsor of the [Customer]."

"Equipment" means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (i) full service vending machines (**"Vending Machines"**); (ii) retail single-serve food service equipment and (iii) fountain service equipment, which shall include ice dispensing capability.

"Facilities" shall mean the entire premises of every facility owned and operated by the Customer or its Food Service Provider, as of the effective date of this Agreement and which is located on Customer's main campus property, the boundaries of which are depicted on Exhibit A, attached hereto, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. **"Facilities"** shall also be deemed to include the following buildings expected to be added to Customer's campus during the Term of this Agreement: University Crossing (previously St. Joseph's Hospital), Emerging Technology and Innovation Center (ETIC), Health and Health and Social Science Building (HSS), and a new East Campus Residence Hall. Customer reserves the right to negotiate with Pepsi to incorporate additional facilities under the above noted definition in the event Customer acquires any real property, constructs any new buildings not listed above, or initiates any new convenience store operations or restaurants in space not covered by this definition of "Facilities" during the Term of the Agreement.



"Food Service Provider" shall mean Aramark or any food service provider which may serve at the Facilities at any point during the Term.

"Gallons" shall mean the number of gallons of the Postmix Products purchased by the Customer from Pepsi.

"Packaged Products" shall mean Beverages that are distributed in pre-packaged form (*i.e.*, Bottles & Cans).

"Postmix Products" shall mean beverage products used to create and dispense fountain beverages.

"Products" shall mean Postmix Products and Packaged Products manufactured, bottled, sold and/or distributed by Pepsi.

"Tsongas Center" shall mean the multipurpose sports and entertainment facility owned by Customer and located at 300 Martin Luther King Jr. Way, Lowell, Massachusetts.

"Year" shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

2. TERM.

The term of this Agreement shall be for a ten (10) year period beginning on January 1, 2012 (the "Effective Date") and expiring on December 31, 2021, unless sooner terminated as provided herein (**"Term"**). Customer shall have the right and option, in its sole discretion, to extend the Term of this Agreement for an additional 5-year period by providing Pepsi with written notice of Customer's intent to exercise its option no later than ninety (90) calendar days prior to the expiration of the Term (the "Extension Term"). Except as provided for herein, all references to "Term" shall include the Extension Term.

3. GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.

Subject to the Permitted Exceptions set forth in Section 7 below, during the Term, Customer hereby grants to Pepsi the following exclusive Beverage availability and exclusive Beverage merchandising right as set forth and described below:

A. Beverage Availability at the Facilities.

(1) Grant of Rights.

(a) Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout the Facilities and shall have the obligation to make Beverages available for sale and distribution in amounts reasonably deemed necessary by Customer to serve Customer's needs. Pepsi shall have the right and obligation to provide all Beverages sold at athletic contests (*i.e.*, concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at or any location on the Facilities (**"Special Events"**). The Products shall be the only Beverages sold,



dispensed or served at the Facilities (*i.e.*, at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all food service concession or vending locations located within the Facilities; and

(b) Pepsi shall have the exclusive right to install the Equipment throughout the Facilities. Pepsi shall install the Equipment at its sole expense. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. Pepsi, or one of its affiliates, shall retain title to all Equipment.

(c) If Pepsi does not offer for sale a particular type of Beverage and is unable to provide a reasonable substitute for such beverage, Customer and its agents shall have the right to purchase such Beverage from a third party and make the Beverage available for sale and distribution until such time as Pepsi introduces or offers for sale that Beverage type.

(d) In the event Pepsi is unable to fulfill the requirements under this Agreement to make Beverages available for sale and distribution, then Customer and its Food Service Provider shall be permitted to purchase Competitive Products to offer for sale and distribution until such time as Pepsi is able to meet its obligations under this Agreement.

(2) Purchasing of Postmix Products.

The Postmix Products shall be purchased by Customer or the Food Service Provider from Pepsi at the prices established by Pepsi from time to time. However, Customer shall retain the right to choose which Postmix Products to purchase; provided, however, that in the event Customer bans or prohibits the purchase of any line of Postmix Products entirely, and such ban or prohibition results in a reduction in Beverage sales at the Facilities by a factor of 25%, Customer and Pepsi shall engage in good faith negotiations to modify the consideration payable by Pepsi as set forth in Section 8 herein.

(3) Purchasing of Packaged Products.

The Packaged Products shall be purchased by Customer or the Food Service Provider from Pepsi at prices established by Pepsi from time to time, subject to the provisions of Section 3.A(5) regarding vending pricing. However, Customer shall retain the right to choose which Packaged Products to purchase; provided, however, that in the event Customer bans or prohibits the purchase of any line of Packaged Products entirely and such ban or prohibition results in a reduction in Beverage sales at the Facilities by a factor of 25%, Customer and Pepsi shall engage in good faith negotiations to modify the consideration payable by Pepsi as set forth in Section 8 herein.

(4) Food Service.

During the Term, Pepsi shall work directly with, Customer and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. Customer shall cause its Food Service Provider to purchase the Product from

Pepsi at prices as determined by Pepsi. The Customer shall cause its Food Service Provider to purchase Products from Pepsi in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. Pepsi shall work directly with Customer and its Food Service Provider to promote sales of the Products through appropriate point-of-sale and other advertising materials bearing the trademarks of the Products at Pepsi's expense.

(5) Vending.

Pepsi shall have the right to place Vending Machines at the Facilities for dispensing the Products, provided, however that Pepsi shall work with Customer to identify optimal locations for such equipment and Pepsi shall obtain Customer's approval of all locations prior to Pepsi's installation of such equipment. Customer reserves the right to specify locations, including the minimum and maximum number of locations or to request removal of machines at any point during the Term of the Agreement. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines. Vend prices for Products sold through Vending Machines as of the beginning of the Term shall be as set forth in Exhibit B attached hereto and shall remain fixed for the first Three (3) Years of the Term. Thereafter, any future price increase requests by Pepsi must be submitted in writing to the Customer's Director of Purchasing and Campus Services no later than April 1st of each year and if approved will only be allowed to be implemented in July of each year. Pepsi shall provide Customer a detailed explanation in support of its request for any such price increases. However, Customer will have complete discretion to approve or deny any price increase requested by Pepsi, provided such request will not be unreasonably denied. The parties agree that Pepsi's requests to increase vend prices shall not be denied so long as the increases in vend prices will keep the vend prices at the Facilities consistent with vend prices at other education accounts in the geographic region of the Customer.

B. Product Merchandising Rights.

During the Term and subject to the terms and conditions contained in this Agreement, Customer grants Pepsi the exclusive right to merchandise Beverages at the Facilities as set forth and described below:

(1) Menu Board Advertising.

Customer agrees that Pepsi's trademarks for products shall be listed on the existing menu boards at concession locations in which Products are served to customers at the Facilities. All brand identification containing Pepsi trademarks and/or service marks for the existing menu boards set forth herein will be prepared and installed by Customer at Customer's sole cost and expense. Notwithstanding the foregoing, in the event Customer replaces its existing menu boards with new menu boards, which may include digital menu boards, Pepsi shall have the right to request that Pepsi's trademark(s) for Pepsi® be included

on such replacement menu boards along with the trademarks for any other sponsors selected by Customer.

(2) Approved Cups.

Customer agrees that all Products served, sold or dispensed at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products. Pepsi agrees to make Approved Cups available for purchase and the Customer shall purchase, and shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling Beverages at the Facilities purchase all Products directly from Pepsi at prices determined by Pepsi.

Customer shall cause Products to be served at all events taking place at the Tsongas Center and served as part of the catering selection in private boxes, suites, backstage areas, locker rooms and press areas, subject to the exceptions noted in Section 6.B.

4. GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.

During the Term, Customer hereby grants to Pepsi the right to advertise and promote Products in and with respect to the Customer and the Customer Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

A. Advertising

(1) Facilities and Print Advertising.

Pepsi shall have the right to Facilities Advertising (as defined in Section 4.A.(2) below) and print advertising as mutually agreed between the parties and as further outlined in Exhibit C.

(2) Design and Installation of Facilities Advertising.

Pepsi agrees, at its own cost, to provide Customer with the general design of all advertising for Pepsi and the Products to be installed within the Facilities (hereinafter "Facilities Advertising"). The Facilities Advertising shall be constructed and installed by Customer (or an agent thereof) at Customer's sole cost and expense. All Facilities Advertising shall be in conformity with the general scheme and plan of the Customer and the surrounding areas. Customer shall have the right to decline to display any Facilities Advertising which is in violation of any statute, regulation or ordinance, or which Customer reasonably considers to be misleading or offensive, or which contains a comparative or qualitative description of Pepsi's products, price information or other indications of savings or value about Pepsi's products, any message that otherwise endorses Pepsi's products or induces one to purchase or use Pepsi's



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products, or causes any payments from Pepsi to Customer to not be treated as “qualified sponsorship payments” as that term is defined in Internal Revenue Code Section 513(i).

(3) Advertising/Signage Changes.

Customer recognizes Pepsi’s right to change, modify and alter its advertising for, or identification of, any of the Products or to discontinue the manufacture of any of the Products. Pepsi shall reimburse Customer for all reasonable costs and expenses incurred by Customer in changing or modifying or altering any Facilities Advertising, menu boards and other Pepsi identification or references to any of the Products necessitated by Pepsi’s changes to the advertising, trademarks or trade names, designations or identification thereof. Pepsi shall have the right to modify change or alter the promotional messages appearing thereon and all such modifications, changes and/or alterations shall be at Pepsi’s sole cost and expense. Customer shall use reasonable efforts to minimize the cost to Pepsi for modifying, altering and/or changing Pepsi’s advertising.

(4) Maintenance of Signage.

Customer shall maintain all Facilities Advertising and other signs and advertising for Products in good order. Customer shall affect any necessary repairs reasonably determined by Customer at Customer’s sole cost and expense. Where practical, Customer shall consult with Pepsi prior to incurring any material signage or other related maintenance expenses.

(5) Advertising/Signage Restrictions

Pepsi acknowledges and agrees that Customer shall have the right to block or obscure (either physically or electronically) any Facilities Advertising or other signage during certain events at the Facilities if Customer is obligated to do so pursuant to any requirement imposed by or any agreement with the National Collegiate Athletic Association (“NCAA”) or any of Customer’s affiliated athletic conferences or leagues, or in connection with any non-Customer sponsored event held at the Facilities.

B. Promotional Rights.

(1) General Pouring Rights Designation.

Customer hereby agrees that Pepsi shall have the right to promote the fact that Pepsi is a sponsor of the Customer and that the Products are available at the Facilities, including the right of Pepsi to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of television, radio and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served.



C. University of Massachusetts Licensing and Trademark Agreement

Pepsi must seek prior approval from the University of Massachusetts Licensing and Trademark Office for all uses of the University's names, logos and/or trademarks in all promotional and advertising material, including but not limited to, newspaper advertising, radio and TV ads, handouts, brochures, catalogs, store signage, eCommerce sites, mailings and posters. Approval will not be unreasonably withheld by the Licensing Office. Pepsi shall execute the University's Non-exclusive License Agreement to Use Certain Marks of the University of Massachusetts, a copy of which is attached hereto as Exhibit E. Subject to the terms of the University's License Agreement and approval by the University Licensing Office, University grants Pepsi the right to use the School's seal, logotype, and associated trademarks and service marks for the limited purposes of promoting Products within the context of promotional activities. As set forth in the University's Non-exclusive License Agreement to Use Certain Marks of the University of Massachusetts, Customer represents and warrants that it is the sole and exclusive owner of all right, title and interest in and to the Customer Marks (including, without limitation, the goodwill associated therewith) and Pepsi's use of the Customer Marks pursuant to this Agreement or the License agreement will not infringe on the rights of any third parties.

D. University of Massachusetts Lowell Graphic Identity Standards

Pepsi shall be aware of and shall comply with the University of Massachusetts Lowell Graphic Identity Standards Guide (accessible at http://www.uml.edu/public_affairs/standards_guide.html and http://www.uml.edu/public_affairs/graphics_identity_guide10.09.pdf). The UMass Lowell Identity Standards Guide was created to ensure that all materials and merchandise representing the University present a clear, consistent and positive image of the University. The standards guide specifies the use of the University (horizontal and vertical treatments) and River Hawk logos as well as the colors and typefaces to be used in all situations and configurations. Pepsi and any vendors engaged by Pepsi using materials bearing the UMass Lowell name and/or logos shall comply with the UMass Graphic Identity and Standards Guide. Any variation or deviation from standards spelled out in the guide must be approved in advance by the University Public Affairs Department.

E. Representations, Warranties and Covenants regarding the Ownership and Protection of Proprietary Rights of Pepsi.

Pepsi represents and warrants that Pepsi is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "**Pepsi Marks**") under a license from PepsiCo, Inc. Pepsi represents and warrants that its use of the Pepsi Marks pursuant to this Agreement will not infringe on the rights of any third parties. Customer acknowledges that nothing contained in this Agreement shall provide Customer with any right, title or interest to the names, logos, service marks and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. Customer (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Pepsi and its affiliates and cooperate with PepsiCo, Inc., Pepsi and its affiliates to procure



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any protection or to protect any of the rights of PepsiCo, Inc., Pepsi and its affiliates in and to the Pepsi Marks. Customer shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Pepsi or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Pepsi Marks. Customer shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

5. GRANT OF OTHER RIGHTS.

A. Sampling.

Customer agrees to permit Pepsi to conduct, at Pepsi's sole cost and expense, limited sampling of Pepsi products at the Facilities in a form and manner as specifically authorized and approved by Customer and in accordance with rules and procedures established by Customer, in its sole discretion, as may be amended or supplemented from time to time by Customer.

B. During the Term, Customer agrees to provide to Pepsi the items set forth in Exhibit D.

6. EXCLUSIVITY.

A. During the Term, but excluding the permitted exceptions listed in Section 7 of this Agreement, Customer and its agents (i) shall not themselves nor shall they knowingly permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities or in connection with the Customer and (ii) shall use their best efforts to ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities or in connection with the Customer.

B. Nothing herein shall be construed to prevent the consumption of Competitive Products (a) in backstage areas or limited access areas by performers and their crews in touring attractions utilizing Customer's Facilities on a limited run basis and (b) student organizations, including sororities and fraternities, sponsoring their own events outside of Customer's campus property (as depicted on Exhibit A). Customer and its agents shall have the right to provide Competitive Products to performers and their crews if contractually required to do so.

C. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, Customer, and/or Customer Marks with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, the Customer will promptly oppose Ambush Marketing (as defined below) and take all reasonable steps to stop Ambush Marketing and to protect the exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity immediately upon learning thereof. As used herein, "**Ambush Marketing**" shall mean an attempt by any



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third party, without Pepsi's consent, to associate Competitive Products with the Facilities, Customer and/or Customer Marks, or to suggest that Competitive Products are endorsed by or associated with the Facilities, Customer and/or Customer Marks by referring directly or indirectly to the Facilities, Customer and/or Customer Marks.

D. Customer shall have the right to allow temporary signage, advertising, or trademark visibility for Competitive Products to be displayed on the Customer's campus during Special Promotional Events; provided, however, that (i) Pepsi's exclusive Beverage availability will not be otherwise affected during such Special Promotional Events and (ii) no Competitive Products may be sold, served, or otherwise made available during any such Special Promotional Event. "Special Promotional Event" means and shall be limited to (i) events that are part of a national multimarket pre-sponsored touring show that is sponsored by a manufacturer, licensee or distributor of a Competitive Product and for which advertising rights for a Competitive Product are mandated in an agreement between such sponsor and the athletes, artists, or others performing or participating in such event; (ii) locally sponsored charitable events held on the Customer's campus to the extent that such charitable events have preexisting agreements or a historical relationship with a Competitive Product; and (iii) any other event which the parties agree constitutes a Special Promotional Event.

7. PERMITTED EXCEPTIONS TO EXCLUSIVITY.

While it is the Customer's intent to offer an exclusive agreement as defined in Section 6 of this Agreement, Pepsi expressly agrees that the following items are exempt from this exclusivity agreement and that Customer, its Food Service Provider, or their agents shall have an unlimited right to make such items available for sale or distribution at the Facilities:

- a. Fresh brewed (hot or chilled) coffee and tea;
- b. Bottled water dispensed through water coolers in University offices;
- c. Tap or filtered water dispensed through publically accessible faucets or fountains in the Facilities;
- d. Milk; and
- e. Non-alcoholic beer

In addition, Pepsi acknowledges and agrees that the exclusivity provisions of Section 6 shall not apply to and shall not be deemed to prohibit the sale or distribution of: i) specialty or pre-packaged beverages offered by any food franchises located on Customer's campus, provided such beverages are marketed under the food franchise's brand name (e.g. Starbuck's Frappuccino) and ii) the sale or distribution of Beverages at any Recognized Student Organizations fund raisers.

8. CONSIDERATION.

In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Pepsi by Customer as described herein, and provided Customer is not in breach of this Agreement, Pepsi agrees to pay to Customer:



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A. Capital Improvement Support Funds.

Capital Improvement Support Funds in the amount of Four Hundred Seventy Thousand US Dollars (\$470,000), payable to the Customer within sixty (60) days of the signing of this Agreement by both parties (the “**Capital Improvement Support Funds**”). The Capital Improvement Support Funds are earned by the Customer over the Term. The parties acknowledge and agree that Pepsi shall not provide any Capital Improvement Support Funds to the Customer for the Extension Term. In the event Pepsi terminates this Agreement due to the Customer’s failure to cure a breach hereof, the unearned Capital Improvement Support Funds will be repaid to Pepsi pursuant to the terms of Section 11.D (Pouring Rights Fees in the Event of Termination.) herein.

B. Semi-Annual Pouring Rights Fees.

A Semi-Annual Pouring Rights Fee representing support for Exclusive Rights, Pouring Rights, Vending Commission, Sustainability Support, Riverhawks Sponsor Package, Student Athlete Scholarship, Academic Scholarship Support, Golf Tournament Pouring Rights, Tsongas Center Support and Scoreboard Support (the “**Semi-Annual Pouring Rights Fee**”), payable semi-annually pursuant to the following:

Year	Applicable Time Period	Amount	Due Date: within 30 days after:
1	January 1, 2012 – June 30, 2012	\$143,500	The execution of this Agreement by both parties
1	July 1, 2012 – December 31, 2012	\$143,500	July 1, 2012
2	January 1, 2013 – June 30, 2013	\$143,500	January 1, 2013
2	July 1, 2013 – December 31, 2013	\$143,500	July 1, 2013
3	January 1, 2014 – June 30, 2014	\$143,500	January 1, 2014
3	July 1, 2014 – December 31, 2014	\$143,500	July 1, 2014
4	January 1, 2015 – June 30, 2015	\$143,500	January 1, 2015
4	July 1, 2015 – December 31, 2015	\$143,500	July 1, 2015
5	January 1, 2016 – June 30, 2016	\$143,500	January 1, 2016
5	July 1, 2016 – December 31, 2016	\$143,500	July 1, 2016
6	January 1, 2017 – June 30, 2017	\$143,500	January 1, 2017
6	July 1, 2017 – December 31, 2017	\$143,500	July 1, 2017
7	January 1, 2018 – June 30, 2018	\$143,500	January 1, 2018
7	July 1, 2018 – December 31, 2018	\$143,500	July 1, 2018
8	January 1, 2019 – June 30, 2019	\$143,500	January 1, 2019
8	July 1, 2019 – December 31, 2019	\$143,500	July 1, 2019
9	January 1, 2020 – June 30, 2020	\$143,500	January 1, 2020
9	July 1, 2020 – December 31, 2020	\$143,500	July 1, 2020
10	January 1, 2021 – June 30, 2021	\$143,500	January 1, 2021
10	July 1, 2021 – December 31, 2021	\$143,500	July 1, 2021

The Semi-Annual Pouring Rights Fees are earned throughout the Year in which they are paid. In the event Pepsi terminates this Agreement due to the Customer’s failure



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to cure a breach hereof, the unearned Semi-Annual Pouring Rights Fees will be repaid to Pepsi pursuant to the terms of Section 11.D (Pouring Rights Fees in the Event of Termination.) herein.

C. Vending Incentive Fund.

Each Year throughout the Term, Pepsi will offer Customer Vending Incentive Funds based on revenue from the sale of Products through Vending Machines (the "**Vending Incentive Fund**"). Each Year throughout the Term, Pepsi shall calculate the total revenue collected from Vending Machines placed at the Facilities and subtract applicable sales taxes, fees and deposits (the "**Vending Revenue**"). Pepsi shall then compare the Vending Revenue to the threshold amount of One Hundred Thousand US Dollars (\$100,000) (the "**Threshold Amount**"). The Vending Incentive Fund for the applicable Year shall be thirty-five percent (35%) of the amount of Vending Revenue in excess of the Threshold Amount. Any applicable Vending Incentive Fund will be paid by Pepsi within sixty (60) days of the end of each applicable Year during the Term.

For example, if in Year 1 the Vending Revenue is 140,000, the Vending Incentive Fund shall be:

$$(140,000 - 100,000) * 35\% = 14,000, \text{ to be paid 60 days after the end of Year 1}$$

D. Pouring Rights Growth.

Each Year throughout the Term, Pepsi will offer Pouring Rights Growth Incentive Funds based on the incremental growth of sales. Each Year will be a "**Performance Period**." The "**Base Period**" with respect to each Performance Period will be the immediately preceding twelve-month period or Year. Pepsi and Customer mutually agree that calendar year 2011 revenue will constitute the dollar amount for the Base Period for the first Year of this Agreement. The dollar amount purchased during each Performance Period will be compared with the dollar amount purchased during the corresponding Base Period. If, and to the extent that, the dollar amount purchased during any Performance Period exceeds the dollar amount purchased during the corresponding Base Period, Pepsi will pay Customer ten percent (10%) on all such eligible incremental dollar amount growth ("**Pouring Rights Growth Incentive Funds**"). Any applicable Pouring Rights Growth Incentive Funds will be paid within sixty (60) days after the end of the Year.

9. ADDITIONAL CONSIDERATION.

In addition to the consideration specified above, and provided Customer is not in breach of this Agreement, Pepsi shall provide the following further non-cash consideration ("Additional Consideration") to the Customer:

A. Pepsi will provide annual Product donations of up to a total value of Two Thousand US Dollars (\$2,000) per Year across the Facilities upon request of the Customer, provided however, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer



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acknowledges and agrees that donated Product requests not used/made in any Year shall not be carried over to the subsequent Year.

B. Pepsi will provide support various mutually agreed upon student promotions throughout the Year with a value (as determined by Pepsi) not to exceed Eight Thousand US Dollars (\$8,000) per Year (the "**Marketing Support**"). Customer acknowledges and agrees that Marketing Support cannot become cash payable to the Customer and that Marketing Support not used in any Year shall not be carried over to the subsequent Year.

C. Pepsi will provide athletics with 7 oz. paper cups annually of up to a total value (as determined by Pepsi) of Two Thousand Five Hundred US Dollars (\$2,500) per Year upon request of the Customer, provided however, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that donated cup requests not used/made in any Year shall not be carried over to the subsequent Year.

D. Pepsi will provide athletics with Gatorade Cooler Kits annually of up to a total value (as determined by Pepsi) of Two Thousand Five Hundred US Dollars (\$2,500) per Year upon request of the Customer, provided however, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that Gatorade Cooler Kits requests not used/made in any Year shall not be carried over to the subsequent Year.

E. Pepsi will support various agreed upon activities during Student Orientation period each Year with a value (as determined by Pepsi) not to exceed One Thousand US Dollars (\$1,000) per Year (the "**Orientation Support**"). Customer acknowledges and agrees that Orientation Support cannot become cash payable to the Customer and that Orientation Support not used in any Year shall not be carried over to the subsequent Year.

F. Pepsi agrees to host a Holiday Party at the ICC. Other events as staff meetings and business events will also be considered by Pepsi. Pepsi estimates payments for use of the ICC not to exceed Three Thousand Five Hundred US Dollars (\$3,500) per Year (the "**ICC Support**"). Customer acknowledges and agrees that ICC Support not used in any Year shall not be carried over to the subsequent Year.

G. Each Year during the Term, Pepsi agrees to select one of the Customer's students to hire as a summer intern, with a salary of approximately Seven Thousand Five Hundred US Dollars (\$7,500) to help grow sales at the Customer.

H. Pepsi agrees that all Additional Consideration specified in this section of the Agreement will be tracked and accounted for by Pepsi with regards to volume and dollar value of amounts expended in connection with each item noted herein. Pepsi further agrees to provide an itemized report of these expenditures upon request of the Customer.



10. EQUIPMENT AND SERVICE.

A. Beverage Dispensing and Other Equipment.

(1) Pepsi shall, based upon Pepsi's survey of the Facilities' needs, provide and install at Pepsi's sole expense all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Pepsi or its affiliates. Customer will supply at its expense, electrical power, water and other utilities reasonably required for the operation of the Equipment. Any additional utility requirements and the installation of additional utility equipment by Pepsi must be approved by Customer.

(2) During the Term Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will service and stock, if necessary, (i) the Equipment and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities.

(3) The Equipment may not be removed from the Facilities without Pepsi's written consent, and the Customer agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi. Within thirty (30) business days of the termination or expiration of the Agreement, Pepsi shall remove all Equipment from the Facilities at no expense to the Customer.

The Customer retains the right, with reasonable notice, to request a change in location or total removal of vending equipment if deemed appropriate. The Customer also retains ultimate control over the hours of operation and access to vending machine areas.

(4) All Beverage Vending Machines must be able to accept coin, bills and the University's UCard, which is operated under the Heartland Payment Systems (HPS) solution, as a form of payment. Pepsi shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom. Each Vending Machine shall return proper change and provide other features as may be beneficial to the users. Each machine must be equipped with a continuous registering meter that cannot be manually reset. The Customer agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals. Pepsi shall not be obligated to pay commissions as provided in this Agreement on documented revenue losses resulting from vandalism or theft of product with respect to any Vending Machines on the Facilities.

Pepsi shall put in writing and display on or near the vending machines the steps necessary for users to claim money lost due to a machine malfunction. This procedure must be reviewed and accepted by the Customer prior to posting and must indicate refund locations throughout the University.

(5) Pepsi will provide all automatic vending and related equipment necessary to provide quality refreshment service which will be placed in areas



PEPSI BEVERAGES COMPANY

designated by the University. All equipment installed will meet the specifications published by the United States Food and Drug Administration and the National Sanitation Foundation, have UL or similar approval, and comply with all federal, state and local laws. Energy conservation is of the utmost concern to the University. Pepsi must install EnergyStar or equivalent machines and provide the energy requirement information of each machine installed to the University. Pepsi further agrees to work with the University in developing ways to reduce energy consumption of the equipment provided by Pepsi.

(6) Pepsi agrees to install UCard readers on Vending Machines placed at the Facilities as required by Customer, in accordance with a mutually agreed to conversion schedule. Customer agrees Pepsi shall retain title to the UCard readers purchased by Pepsi.

(7) Pepsi shall offer custom front to certain Vending Machines, as mutually agreed upon between Pepsi and the Customer.

(8) Pepsi reserves the absolute right to remove any glass front Vending Equipment that sells less than eight (8) cases of Product per week or any other Vending Equipment that sells less than two (2) cases of Product per week.

B. Service to Equipment.

Other than routine maintenance required for the daily operation of the Equipment, which shall be the responsibility of and completed by Customer or its designee, Pepsi or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Pepsi shall provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Pepsi shall respond to each Customer request and use reasonable efforts to remedy the related Equipment problem as soon as possible.

Pepsi will ensure that all Equipment is replenished to provide ample supply for all items during all hours including evening, weekend, holiday and normal day hours. Servicing and repairing of machines shall be done locally seven (7) days per week, fifty-two (52) weeks per year. Only emergency service or repairs is required on Customer's eleven (11) recognized holidays each year. Service shall be done during extended business hours from 7:00 a.m. through 7:00 p.m. Upon notice that a machine is inoperative, Pepsi shall repair or replace it within one working day. Repair personnel shall maintain a log showing time of call, time of arrival, and the work done. Copy of repair log(s) will be submitted to Customer upon request.

C. Data Security and PCI Compliance.

Pepsi will exercise reasonable care to prevent disclosure or use of credit card information, other than to staff for the purpose of assisting you in completing a card transaction, or to the applicable Association, or as specifically required by law. Vendors are prohibited from storing CVV2 or CVC2, magnetic stripe track data, and ASV and PIN data. Each party will store all media containing card numbers in an area



PEPSI BEVERAGES COMPANY

limited to selected personnel on a 'need to know' basis only and prior to either party discarding any material containing cardholder information, the party will destroy it in a manner rendering the card accounts unreadable. If at any time either party determines that card account number information has been compromised, such party will notify the University immediately and assist in providing notification to the proper parties as we deem necessary. You agree to comply with all current Payment Card Industry Data Security Standards ("PCI Standards") and guidelines that may be published from time to time by Visa, MasterCard or other Associations.

11. **REMEDIES FOR LOSS OF RIGHTS - TERMINATION.**

A. Customer's Termination Rights.

Without prejudice to any other remedy available to Customer at law or in equity in respect of any event described below, this Agreement may be terminated by Customer at any time effective thirty (30) days following written notice to Pepsi from Customer if:

- (1) Pepsi fails to make any payment due hereunder, and such default shall continue for thirty (30) days after written notice of such default is received by Pepsi; or
- (2) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within thirty (30) days after written notice of default is delivered to Pepsi.

Notwithstanding the foregoing, the Customer may terminate the Agreement without cause at any time by giving Pepsi ninety (90) days written notice ("Without-Cause Termination"), provided that Customer has made a determination that there has been a change in circumstances resulting in a material reduction in value of the Agreement to Customer and the parties are unable to agree to a modification of the Agreement's terms; and provided further that Customer agrees that an offer of higher value from a competitor of Pepsi (whether solicited by Customer or not) for the same or substantially similar rights granted herein shall not be deemed to constitute a "material reduction in value" for the purposes of triggering Customer's "Without-Cause Termination" right. Customer shall not actively solicit competitive bids in this manner during the term of this Agreement for so long as Pepsi is not in breach of its obligations hereunder; provided, however, that Customer may solicit competitive bids during the final year of the Term in the event Customer declines to exercise its option to extend the Term of this Agreement pursuant to Section 2.



PEPSI BEVERAGES COMPANY

B. Pepsi's Termination Rights.

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi at any time, effective thirty (30) days following written notice to the Customer if (i) any of the Products are not made available as required in this Agreement by the Customer, their agents or concessionaires; (ii) any of the rights granted to Pepsi herein are materially restricted or limited during the Term of this Agreement; or (iii) a final judicial opinion or governmental regulation prohibits the availability of Beverages, whether or not due to a cause beyond the reasonable control of the Customer, then Pepsi may give the Customer written notice of such event and the Customer shall have a thirty (30) day period within which to cure such breach. If Customer fails to cure such breach within a thirty (30) day period, Pepsi may terminate this Agreement and to recover from the Customer a reimbursement in accordance with Section D below (Pouring Rights Fees in the Event of Termination.).

C. Additional Termination Rights Available to Pepsi and Customer.

Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Agreement may be terminated by either party if the other party, or any parent of such other party, shall: (1) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement; or (2) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (3) admit in writing its inability to pay its debts as such debts become due.

D. Pouring Rights Fees in the Event of Termination.

If Pepsi terminates this Agreement pursuant to Section 11.B or Customer terminates this Agreement without cause pursuant to Section 11.A, then Pepsi shall be entitled to from Customer, without prejudice to any other right or remedy available to Pepsi, and Customer shall pay to Pepsi all funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With regard to the Capital Improvement Support Funds, the amount of such reimbursement shall be determined by multiplying the Capital Improvement Support Funds by a fraction, the numerator of which is the number of months remaining in the Term at the time such termination occurs and the denominator of which is the total number of months within the Term (e.g., 10 year term is 120 months). With regard to the Semi-Annual Pouring Rights Fee, the amount of such reimbursement shall be determined by multiplying Semi-Annual Pouring Rights Fee by a fraction, the numerator of which is the number of months remaining in the semester in which the Agreement is terminated at the time such termination occurs and the denominator of which is six (6).

E. Payments in the Event of Termination

If Customer terminates this Agreement for cause pursuant to Section 11 A. (1) or (2), then Customer shall be entitled to receive from Pepsi, without prejudice to any other right or remedy available to Customer, and Pepsi shall pay to Customer, all payments due Customer up to the effective date of termination of the Agreement, including, but not limited to any payments due pursuant to Sections 8.B, 8.C and 8.D. of this Agreement. Pepsi shall make all such payments to Customer within thirty (30) days of the effective date of termination of the Agreement.

12. TAXES.

The parties acknowledge and agree that Customer is exempt from federal, state and local taxes. Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the Customer in connection with any fees payable by Pepsi under this Agreement. In addition, Pepsi shall be responsible only for the payment of taxes on the sales of Products through Vending Machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment.

13. CONFIDENTIALITY.

All items of this Agreement are subject to Massachusetts General Laws Chapter 4, Section 7, Section 26 and Chapter 66, Section 10 regarding public access to such documents.

14. REPRESENTATIONS, WARRANTIES AND COVENANTS.

A. Each party represents and warrants to the other: (1) it has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and (2) all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party; (3) the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and (4) the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

B. Each of the parties hereto agree that: (1) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and (2) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.



15. INDEMNIFICATION.

A. Pepsi will indemnify and hold the Customer, UMBA, its agents, officers and employees harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of Products purchased directly from Pepsi; and/or (iii) the negligence or willful misconduct of Pepsi

B. To the extent authorized under the laws of the Commonwealth of Massachusetts, and subject to all sovereign immunities available to Customer, Customer shall be responsible for claims or damages arising as a result of this Agreement solely to the extent such claims or damages are attributable to the negligent acts or omissions of Customer or its employees.

C. The provisions of this Section shall survive the termination of this Agreement.

16. INSURANCE.

Pepsi shall provide, at its own expense, and maintain throughout the duration of this contract the following coverage:

A. Worker's Compensation Insurance in accordance with the requirements of Massachusetts Laws, Chapter 438, Acts of 1938 and General Laws Chapter 152 as amended. Pepsi shall waive its rights of subrogation against the Customer for any of its employees Worker's Compensation Claims.

B. General Liability Insurance, to cover bodily injuries and property damage in the amounts not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

General Liability policy shall provide a notice of cancellation to the Customer (evidence of notice shall be provided), waiver of subrogation and include the University Massachusetts, its trustees, officers and employees, the University of Massachusetts Building Authority (UMBA), and the Commonwealth of Massachusetts as additional insureds.

C. Additional Umbrella Liability Insurance coverage for at least ten million dollars (\$10,000,000) in excess of the employer's liability, commercial general liability and automobile liability limits required.

D. Vehicle Liability Insurance including Property Damage covering all owned, un-owned and hired automobiles used in connection with work performed. Minimum limits should be: bodily injury liability for five hundred thousand dollars (\$500,000) for each person; one million dollars (\$1,000,000) for each accident; one hundred thousand dollars (\$100,000) for property damage liability for each accident.



PEPSI BEVERAGES COMPANY

E. Pepsi shall furnish the Customer with a certificate of insurance for each policy, prior to the execution of the Agreement, as evidence that the required coverages are in full force and effect. The certificate shall be reissued at the renewal of each policy.

F. Pepsi will not terminate any such insurance policy without thirty (30) days prior notice to the Customer. Such termination will constitute a breach of the Agreement, which will be cause for termination of the Agreement by the Customer.

G. Pepsi assumes responsibility for loss or damage to all personal property brought on the Customer premises.

H. Pepsi assumes liability for losses, expenses, damages, demands and claims in connection with any injury, including death, or alleged injury, or damage, or alleged damage to property sustained or alleged to have arisen out of the performance of work by Pepsi, its agents, servants and employees or subcontractors, including losses, expenses or damages sustained by the Customer and the UMBA, and shall indemnify and hold harmless the Customer, its trustees, officers and employees and the UMBA, and the agents, servants, and employees of the foregoing, from any and all such losses, expenses, damages, demands and claims, and shall, to the extent permitted by law, defend any suit or action brought against them, or any of them, based upon any such alleged injury or damage, and shall pay all damages, costs, and expenses including attorneys fees in connection therewith or resulting therefrom.

I. The liability for all machines and contents shall remain the sole responsibility of the vendor. Under no circumstances shall the Customer incur any liabilities whatsoever for damage, pilferage, acts of violence, fire or theft, including without limitation merchandise or money stored within the machines, or liability for damages, injury or sickness due to product spoilage, contamination, or other fault, and vendor shall indemnify the Customer against any such losses.

17. EMPLOYEE BACKGROUND CHECK AND EMPLOYEE CONDUCT

Pepsi shall obtain background information on any applicant or employee assigned to work at Customer under this Agreement. Such background information should include, but not limited to, reference checks and verification of prior employment, and any information relevant to the applicant or employee's reliability and trustworthiness. In addition, Pepsi shall perform a criminal record check for any employees assigned to work at Customer's Facilities under this Agreement and shall inform Customer in the event such check discloses a criminal record. Customer shall have the right, in its discretion to request that Pepsi not assign an employee or agent to work at the Facilities based on the results of the individual's criminal record check. All employees or agents of Pepsi providing services to Customer at the



Facilities shall be well groomed and conduct themselves in a professional and courteous manner and shall wear a uniform that identifies them as employees or agents of Pepsi and display's the employee's or agent's name.

18. RECORDKEEPING, AUDIT, AND INSPECTION OF RECORDS

Pepsi shall maintain books, records and other compilations of data pertaining to the requirements of the Agreement to the extent and in such detail as shall properly substantiate claims for payment under the Agreement. All such records shall be kept for a period of six (6) years or for such longer period as is specified herein. All retention periods start on the first day after final payment under this Agreement. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting there from, or until the end of the applicable retention period, whichever is later. The Governor, the Secretary of Administration and Finance, the State Comptroller, the State Auditor, the Attorney General, the Federal grantor agency (if any), the Customer, or any of their duly authorized representatives or designees shall have the right at reasonable times and upon reasonable notice, to examine and copy, at reasonable expense, the books, records, and other compilations of data of the Pepsi which pertain to the provisions and requirements of this Contract. Such access shall include on-site audits, review, and copying of records.

19. LICENSE REQUIREMENTS

Pepsi shall comply with all Local, State and Federal Laws, Regulations, Ordinances, or Codes, which are in any way applicable to the vending machines during the term of the Agreement or an Extension thereof. All Permits and Licenses which may be required by any Local, State, or Federal Laws, Regulations, Ordinances, or Codes for the installation, maintenance, operation or use of the vending machines shall be procured and maintained by the vendor at its own expense, and each vending machine or each location shall display all required Licenses and Permits, any breach of which may constitute grounds for immediate termination of the Agreement at the option of the Customer.

20. NOTICES.

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:



PEPSI BEVERAGES COMPANY

If to Pepsi:

Pepsi Beverages Company
100 John Road
Canton, MA 02021
Attn: Director, Food Service

With a copy to (which shall not constitute notice):

Pepsi Beverages Company
One Pepsi Way
Somers, NY 10589
Attn: Legal Department

If to Customer:

University of Massachusetts Lowell
Wannalancit Business Center, Suite 415
600 Suffolk Street
Lowell, MA 01854
Attn: Director of Purchasing

21. ASSIGNMENT.

This Agreement or any part hereof or interest herein shall not be assigned or otherwise transferred by either party without the prior written consent of the other party nor shall the same be assignable by operation of law, without the prior written consent of the other party; *provided, however*, that Pepsi may assign and transfer this Agreement (in whole and not in part) to an affiliate without the consent of Customer hereto; *provided, however*, that, (x) such affiliate is capable of fully performing all obligations of the assignor hereunder and (y) such affiliate agrees, under a separate agreement acceptable to the other party and signed by such affiliate, to perform all of the obligations and assume all liabilities of the assignor hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Customer represents and warrants to Pepsi that any change in the Food Service Provider at the Facilities shall not affect Pepsi's rights or obligations hereunder. Notwithstanding the foregoing, nothing in this Agreement shall be construed to limit the rights of the Amherst, Dartmouth, Boston or Worcester campuses of the University of Massachusetts or of the University of Massachusetts system, to enter into a sponsorship, marketing, promotion, merchandising, endorsement, or other agreement with a competitor of Pepsi.

22. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to conflicts of laws principles. Any legal proceeding of any nature whatsoever brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted for trial, without jury, before the State Courts of the Commonwealth of Massachusetts, having jurisdiction in Middlesex County, Massachusetts,



The parties consent and submit to the jurisdiction of any such court and agree to accept service of process inside or outside the Commonwealth of Massachusetts in any manner to be submitted to any such court pursuant hereto, and the parties hereto expressly waive all rights to trial by jury regarding any such matter.

23. NON-DISCRIMINATION IN EMPLOYMENT.

Pepsi shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation or a person who is a member of, applies to perform, or has an obligation to perform service in a uniformed military service of the United States, including the National Guard on the basis of that membership, application or obligation. Pepsi agrees to comply with all applicable Federal and State employment statutes, rules and regulations in connection with the performance of this Agreement.

24. FORCE MAJEURE.

If the performance by either party hereto of its respective nonmonetary obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

25. RELEASE, DISCHARGE OR WAIVER.

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

26. PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.

This Agreement and the exhibits attached hereto, set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its affiliates and any affiliate of Customer.

27. RELATIONSHIP OF THE PARTIES.

The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a joint venture partnership between the parties.

Pepsi, or its employees or agents performing under this Agreement, are not to be deemed to be employees of the University or to be agents of the University in any manner whatsoever. Pepsi or its employees or agents will not hold itself or themselves out as, nor claim to be, an officer or employee of the University and will not make any claim, demand, or application to or for right or privilege to an officer or employee of the University, including, but not limited to, wages or salary, workmen's compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

28. EFFECT OF HEADINGS.

The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

29. CONSTRUCTION.

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties.

30. SEVERABILITY.

If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

31. AMENDMENTS.

No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective.

32. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.



PEPSI BEVERAGES COMPANY

33. FURTHER ASSURANCES.

Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly entered into as of the date above written.

Customer

Bottling Group, LLC

By: 

By: 

Name: Thomas S. Hoole

Name: Robert Sergi

Title: Director of Purchasing

Title: Foodservice Senior Manager

Date: 3/21/2013

Date: 3/20/2013

Exhibit A

Campus Map

Exhibit A

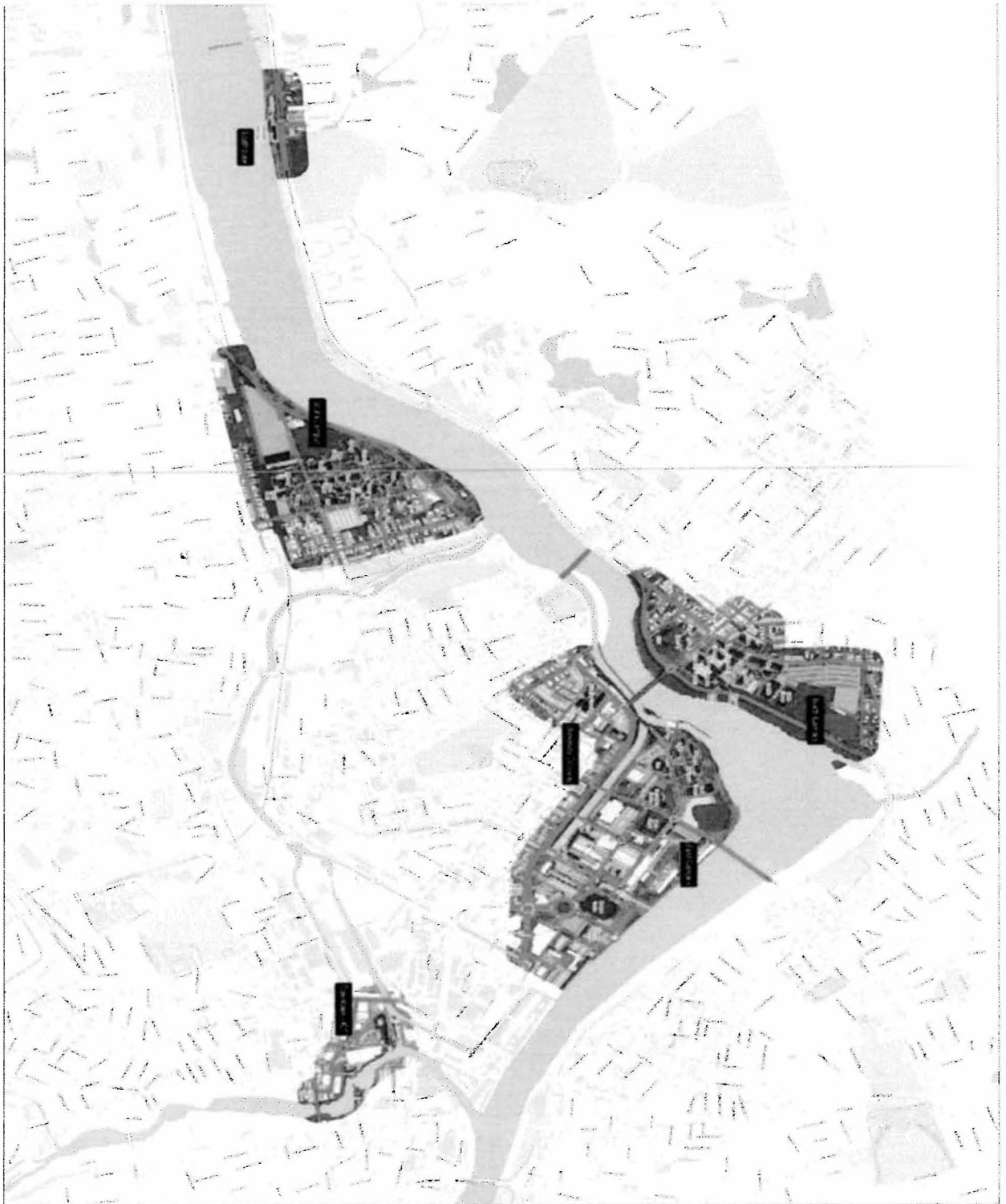


Exhibit B**Vend Pricing****(1) Vending Pricing**

Such pricing to be set July 2012 and held firm for three (3) years after such time future price increase requests will conform with requirements set forth in Section 3, Subsection A5 of this agreement.

Product	Package Size	Brand	Price
Carbonated Soft Drink	20 oz	Pepsi Family	\$1.50
Non Carbonated Soft Drink	20 oz	Tropicana/Lipton	\$1.50
Water	20 oz	Aquafina	\$1.50
Vitamin Enhanced Water	20 oz	SoBe Life Water	\$1.75
Isotonic	20 oz	Gatorade/G2	\$1.75
Juice	15.2 oz	Ocean Spray	\$1.75
Tea	16 oz	Lipton Glass	\$1.75
Energy	16 oz	Mt. Dew AMP/Rockstar	\$2.50
Cold Coffee	9.5 oz	Frappuccino	\$2.50

Exhibit C

Facilities & Printing Advertising

- (1) Facilities Advertising.
Such advertising as may be mutually agreed upon between the parties
- (2) Print Advertising.
Such advertising as may be mutually agreed upon between the parties

Exhibit D

Tickets & Other

- 4 Tickets (Minimum), to all UMass Lowell Hockey Games at Tsongas Center in Pavilion
- one Foursome for Athletics Golf Outing



Exhibit E

Non-exclusive License Agreement to Use Certain Marks of the University of Massachusetts



Room 817
Lincoln Campus Center
One Campus Center Way
University of Massachusetts
Amherst, MA 01003

Pepsi Trademark License

*University of Massachusetts
Trademark AND LICENSING Administration*

AMHERST • BOSTON • DARTMOUTH • LOWELL • WORCESTER

Telephone: (413) 577-8125
FAX: (413) 577-0075

email: dcurlley@mail.aux.umass.edu

Exhibit E

**Combined License Agreement
to Use Certain Marks of the University of Massachusetts Lowell**

1. PURPOSE – This is an agreement by and between Bottling Group, LLC and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 100 John Rd Canton, MA 02021 (“Pepsi”) and the University of Massachusetts Trademark Administration and Licensing Program Licensing (hereinafter called “Licensing”)

WHEREAS, Pepsi desires to be licensed to utilize the University of Massachusetts Lowell Marks and logos in connection with the Pepsi Pouring Rights Agreement between the Pepsi and University of Massachusetts Lowell (hereinafter called “Pepsi Agreement”) for the use of the University’s names, logos or trademarks in connection with the terms and specifications of the Pepsi Agreement and subject to the additional terms and conditions of this agreement

2. TERM (Date of Execution) - The term of this agreement shall be for a period of Ten (10) years commencing on January 1, 2012 (the “Effective Date”) and expiring on December 31, 2021, unless sooner terminated as provided herein (“Term”). Should the Pepsi Agreement terminate for any reason, the license to use the University Marks will terminate immediately. Should the Pepsi Agreement be extended as provided for in said Pepsi Agreement, the license to use the University Marks will also be extended.

3. DEFINITIONS

University Marks designs, trademarks, logotypes, service marks and any other symbols associated exclusively with the identification of the University of Massachusetts Lowell

Licensed Articles products and services authorized by the University to bear University marks

4. GRANT OF LICENSE

4.1 Grant - subject to the terms and conditions of this Licensing Agreement and the Pepsi Agreement, Licensing hereby grants Pepsi a non-transferable, non-exclusive license to use the University Marks on, and in conjunction with the marketing, advertising and promotion of their services.

4.2 Limitations on License - no license is granted hereunder for the use of the University Marks for any purpose other than upon or in connection with the services and uses described in this Agreement and the Pepsi Agreement.

4.3 Exclusivity - Pepsi is granted exclusive rights to use the names, marks Trademarks and logos of the University of Massachusetts Lowell subject to the terms and conditions of this Agreement and the Pepsi Agreement.

4.4 Non-Exclusivity- nothing in this Agreement or the Pepsi Agreement shall be construed to prevent the University of Massachusetts System, Departments and Campuses, with the exception of the Lowell Campus, from licensing the use of the University Marks to any other party for any purpose including, without limitations, the grant of other Licenses to other service providers or manufacturers during the term of this agreement for use of the University Marks in connection with Licensed Services or Products either within or outside the United States.

5. APPROVAL AND QUALITY STANDARDS - Licensing reserves the right to disapprove and prevent the distribution of any service or article bearing the marks of the University that does not meet the standards of quality and propriety. All promotional and marketing material, advertising and/or articles, shall be submitted free of cost to the **University of Massachusetts Trademark Administration and Licensing Program, Room 817 Campus Center, Amherst, MA 01003**, for approval prior to use. To ease the burden of such submissions, Licensing will permit emailed mock up storyboards, and/or faithful sketches of the intended advertisement or marketing initiative. Licensing agrees to respond within ten days of the receipt of the submission and approval shall not be unreasonably withheld. If Licensing fails to respond to any written submission by Pepsi within five (5) business days of Licensing's receipt of such submission, then such submission will be deemed approved by Licensing.

5.1 Pepsi agrees that all licensed use of the University Marks in promotions, advertising and marketing shall contain the appropriate legends, markings and/or notices as required by the University of Massachusetts.

5.2 Pepsi agrees that each usage of University Marks shall be followed by either "TM" TM or "R" [®], pursuant to Licensing's instructions. All such legends, markings, and/or notices must be provided to Pepsi by Licensing along with the University Marks.

5.3 Pepsi will not significantly deviate from the standards of quality samples and notice requirements upon which use approval is based. Departure from such standards constitutes a breach of a material term of this Licensing Agreement. Licensing has the right to require Pepsi to immediately cease use of the University of Massachusetts Marks in connection with its advertising, marketing or promotions if they are not consistent with approved standards and samples.

5.4 Pepsi agrees that it will not use any University Mark or any reproduction thereof in any advertising or promotional material in any manner that may distract from or impair the integrity, character, and dignity of the University Marks or reflect unfavorably upon the University of Massachusetts

5.5 Pepsi shall not use the University Marks in connection with lotteries, alcoholic beverages, tobacco, sexually oriented products or services or in violation of the policies of the University of Massachusetts as such policies are communicated by the University of Massachusetts to Pepsi throughout the Term.

6. PROTECTION OF UNIVERSITY MARKS

6.1 Pepsi acknowledges and agrees that the University is the sole and exclusive owner of all right, title and interest in and to the University Marks. Pepsi agrees that nothing in this Licensing Agreement or the Pepsi Agreement gives Pepsi any right, title or interest in the

University Marks other than the right to use them in accordance with this Licensing Agreement. During the term of this Licensing Agreement and thereafter, Pepsi will not contest or otherwise challenge or attack the University's rights in the University Marks or the validity of this Licensing Agreement.

6.2 Pepsi acknowledges that its breach of this Agreement will result in immediate and irreparable damage to the University and that money damages alone would be inadequate to compensate the University. Therefore, in the event of a breach or threatened breach of this Licensing Agreement by Pepsi, Licensing may, in addition to other remedies, immediately obtain and enforce injunctive relief prohibiting the breach or compelling specific performance.

6.3 Pepsi agrees to assist in the protection of the University Marks. Pepsi, upon specific request from the University, will provide documentation and/or specimens regarding use of each University Mark as required by the University.

6.4 Pepsi acknowledges that they will have no ownership rights in the University's Marks should the University Marks appear in conjunction with copyright materials created or held by Pepsi.

7. GOODWILL IN UNIVERSITY MARKS - Pepsi recognizes the value of the goodwill associated with the University Marks and acknowledges that the Marks and all rights therein and the goodwill pertaining to the Marks belong exclusively to the University of Massachusetts. Pepsi further recognizes that the University Marks have acquired secondary meaning.

Pepsi agrees that its use of the University Marks will benefit the University and that Pepsi will not acquire any rights in the University Marks by virtue of the use of the Marks under this Agreement.

8. INDEMNIFICATION/ HOLD HARMLESS - The University shall have no liability for any licensed service or product produced or offered by Pepsi and Pepsi shall indemnify, hold harmless and defend the University and its trustees, officers, employees and agents thereof, from any and all product or service liability claims, demands causes of action, or damages, including reasonable attorney's fees, caused by or arising from services or products produced or sold by Pepsi or out of any action by Pepsi in using the University Marks in connection with the distribution or sale of services or any other use of the University Marks in advertising, marketing or promotion.

9. CONFORMITY TO LAW - Pepsi undertakes and agrees that the use of the University Marks in services, promotions, advertising and/or marketing shall be in conformity with all applicable Federal, State and local laws, ordinances, regulations and rules.

10. SEVERABILITY - In the event that any portion of this Licensing Agreement is declared invalid or unenforceable for any reason, such portion is deemed severable herefrom and the remainder of this Licensing Agreement shall be deemed to be, and shall remain, fully valid and enforceable.

11. WAIVER - Failure of either party to require the performance of any term in this Licensing Agreement or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

12. ENFORCEMENT - Pepsi agrees to assist the University in the enforcement of any rights of the University in the University Marks as it relates to this Licensing Agreement. Pepsi agrees to notify the University of any Infringements by third parties that come to Pepsi's attention as the result of the Pepsi

Agreement. The University shall have the sole right and discretion to bring infringement proceedings involving the University Marks. However, nothing in this Licensing Agreement shall require the University to bring suit or take action for the infringement of any of the University Marks.

13. LIABILITY INSURANCE - Product liability insurance coverage for this Agreement has been provided for in the required policy stated in Section 16 of the Pepsi Agreement for Pouring Rights on the University of Massachusetts Lowell Campus. Such policy will, in addition to the coverage customarily included in a Commercial General Liability Policy, cover against all claims, demands, causes of action, lawsuits judgments and damages including but not limited to reasonable attorney's fees arising out of all alleged defects in the design, manufacture, sale and use of the Licensed Articles produced by Pepsi.

14. TERMINATION - Without prejudice to any other right, the University shall have the right to terminate the License Agreement to use certain University Marks of the University of Massachusetts Lowell upon written notice to Pepsi if:

14.1 Pepsi files any petition under any Federal or State bankruptcy statute, or is adjudicated as bankrupt or insolvent, or if any receiver is appointed for its business or property or if any trusty in bankruptcy is appointed under the laws of the United States Government or of the sovereign states.

14.2 Pepsi attempts to grant or grants a sub-license or assigns any right or duty under this Agreement to any person or entity without prior written consent from Licensing.

14.3 Pepsi distributes or sells any service or distributes any advertising, promotions or marketing material containing the University Marks without obtaining prior approval and/or continues to sell/distribute or use them after receipt of notice from the University disapproving or withdrawing approval.

14.4 Pepsi becomes subject to any voluntary or involuntary order of any government agency involving the recall of any products or services and/or promotional advertising or packaging material because of safety, health, fraud, or misrepresentation, or any other hazard or risk to the public.

14.5 Pepsi fails to obtain or maintain the liability insurance required by the Pepsi Agreement.

14.6 Pepsi commits an act or omission directly related to the use of the University Marks that reflects unfavorably or detracts from the good reputation of the University. The University shall not terminate this Agreement in the event that the usage of the University Marks pursuant to this Section was approved by the University.

14.7 Pepsi provides services or advertising, marketing or promotional materials that incorporate the University Marks and which do not conform with all applicable Federal, State or local ordinances, regulations or rules.

14.8 Without prejudice to any other right, if Pepsi fails to take the necessary steps to cure any breach by it of any term or condition of this Agreement within thirty (30) days after receipt of written notice of the breach, the Licensing has the right to terminate the Agreement to use University Marks upon written notice to Pepsi.

15. NOTICE - All notices, consents, waivers, statements and other communications concerning the use of the University Marks by Pepsi must be sent to each party at the addresses below unless

notification of change of address is given in writing. Any notice is to be sent by First -Class mail. Fed X, UPS, or other carrier or telegram and will be considered to have been given at the time the mail is received. Artwork and approvals can be sent via E-mail or by FAX.

University of Massachusetts
Trademark Administration and Licensing Program
Attn: David Curley, Director
Room 225A Campus Center
Lowell, Massachusetts 01003
emailto:dcurley@mail.aux.umass.edu
Tel: 413-577-8125
Fax: 413-577-0033


Pepsi:
Pepsi Beverages Company
24 Kenney Drive,
Cranston, RI
Attn: Regional Marketing Manager

16. ENTIRE AGREEMENT - This Agreement constitutes the entire License Agreement to use certain University Marks that are associated exclusively of the University of Massachusetts Lowell. **Although, certain parts of this Licensing Agreement interact with certain sections of the Pepsi Agreement, this Licensing Agreement is to be considered a separate and independent agreement.** This Licensing Agreement shall terminate immediately in conjunction with any termination of the Pepsi Agreement. Both the Licensing Agreement to use certain University Marks of the University of Massachusetts Lowell and the Pepsi Agreement must be executed simultaneously to validate this Agreement. This agreement supersedes all prior understandings and agreements between the parties with respect to the use of the University Marks by Pepsi. Note: The University marks are governed by this agreement. All other terms concerning the Pepsi Agreement are as agreed in the Pepsi Agreement.

17. LAWS GOVERNING - This Licensing Agreement and any controversy arising from it is governed by the laws of the Commonwealth of Massachusetts.

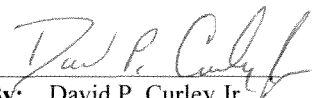
IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized officers or agents.

**BOTTLING GROUP, LCC
OPERATING AS PEPSI
BEVERAGE COMPANY**


By: Robert Sergi
Title: Food Service Senior Manager

Date: 3/20/2013

**UNIVERSITY OF
MASSACHUSETTS**


By: David P. Curley Jr.
Title: Director, Trademark &
Licensing Administration

Date: 3/26/2013